LOW AH SENG vs. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Horne, J.) May 22, 1941]

Road Traffic Enactment (1937) Ss. 80, 113 — Using private car as stage carriage without licence — evidence of carriage of passengers — presumption under S. 113 can be rebutted by evidence — Road Traffic Enactment (1937) Ss. 12 (3), 51 (1).

The appellant was charged under S. 80 of the Road Traffic Enactment for carrying passengers in the car he was driving. He admitted this but said that they were all coolies of his employer and that he was instructed to carry them.

Held, (1) that the presumption under S. 113 which arose when it was established that there were passengers in the car can be rebutted by evidence that the passengers were not conveyed for reward or hire.

(2) that a conviction under S. 80 only showed that in the opinion of the Court the insurer was entitled to avoid the policy of insurance, and so did not automatically necessitate a conviction under S. 51 (1) of the Road Traffic Enactment, as the policy remained in force until the insurer actually avoided it.

Cases referred to:—

(1) *Morris v. Tolman* (1923) 1 K.B. 166.

(2) *Maniam v. Public Prosecutor* (1946) M.L.J. 39.

E. Joseph for the appellant.

McCall for the despondent.

Horne, J.—The appellant did not give evidence on his own behalf but made a statement admitting that he carried persons in the car on the days alleged and said "they are all coolies of my employer and I was instructed to carry them." He then obtained an adjournment and called his employer; and the employer certainly substantiated the appellant's statement that he was carrying coolies on his employer's instructions. If any hire or reward was received at all, there is no suggestion that it was received by the appellant.

Although therefore there was on the evidence and with the aid of the presumption under section 113 a *prima facie* case against the appellant, yet after the defence evidence had been given, it must, I think, be said that the appellant had rebutted the presumption that the conveyance of persons was for hire or reward so far as the presumption could affect him.

Further, on the evidence it cannot, I think, be shown that he was abetting his employer to contravene section 80 (1). I am not saying that an employed driver may not contrary to the authority given to him by his employer "cause a motor vehicle to be used as a stage carriage" in contravention of section 80 of Enactment No. 17 of 1937 (The Road Traffic Enactment). But in this case it must, I think, be accepted that whatever the appellant did he did on his employer's instructions and therefore did not "cause the motor vehicle to be used etc."

The appellant should not therefore have been convicted on the charged under section 80 and the two convictions under that are quashed.

The convictions under section 12 (3) are also quashed. That sub-section clearly applies to a licensee. The words "the licence held by him" govern the words "the person so using the motor vehicle" and these latter words are limited to the holder of the licence, who is the only person liable. (*Morris v. Tolman*[1]).

The convictions under section 51 (1) must also be set aside. At the trial it was assumed that a conviction under section 80 automatically necessitated a conviction under section 51 (1). That assumption has already been stated to be unfounded in *Maniam v. Public Prosecutor*[2]. I would add to what I said there that for the purposes of this action a policy must be considered to be "in force" so long as it is shown to be in existence. A person is not to be convicted because, in any given case, it may be debatable whether the policy covers the actual user. And as it is an offence for any person to issue a false certificate of insurance, the production of an apparently sufficient certificate raises a rebuttable presumption that the required policy is in force.

The most that could be said had there been a conviction under section 80 would be that circumstances had been shown under which the insurer was entitled in the opinion of the Magistrate to avoid the policy, but the fact remains that the insurer has not done so and accordingly the policy remains in force.

All convictions are therefore quashed and the fines are to be returned.

Convictions Quashed.